



The government's interlocutory appeal presents several substantive issues for this Court. Argument will be presented on whether either of the two definitions of "alien unlawful enemy combatant" in 10 U.S.C. § 948a(1)(A) support Appellant's request for reversal of the commission's ruling dismissing the charges without prejudice. Analysis of each definition involves an examination of the plain language of the statute, Congressional intent and Constitutional violations that would result in a ruling for Appellant – namely, violations of separation of powers principles and the prohibitions against ex post facto laws and bills of attainder. Analysis of the definition contained in 10 U.S.C. § 948a(1)(A)(i) also requires consideration of international law requirements for status determinations. These are just the predominant issues involved in the appeal of the commission's ruling. As is apparent from the parties' briefs, there are numerous sub-issues.

There are also a host of procedural issues before this Court. In resolving these issues, the principal issues the Court must resolve are: (1) whether the Deputy Secretary of Defense's appointment of the three judges to this panel was *ultra vires* and void; (2) whether the Secretary of Defense had the power to delegate his appointment authority to the Deputy Secretary of Defense; (3) whether any delegation of authority to appoint this Court's judges can take effect until sixty days after such delegation has been reported to the House and Senate Armed Services Committees; (4) whether the "Acting Chief Judge" had authority to assign the military judges to the panel hearing this case; (5) whether the rules of statutory construction require the rules and regulations authorizing prosecution interlocutory appeals to be strictly construed; (6) whether this Court's Rules of Practice are void because they were not properly promulgated; (7) whether an interlocutory appeal must be dismissed where the Military Commissions Act requires such appeal to be filed "in accordance with the rules of that [Court of Military Commission Review] court" when the Court did

not have valid rules in existence at the time Appellant filed the interlocutory appeal; and 8) whether Appellant's notice of appeal of the military judge's dismissal of the charges is untimely.

Given the significance of the many unrelated issues before the Court, granting additional time will serve the interests of justice and enable the Court to receive meaningful argument on these issues of first impression at this first, historic argument.

Appellee contacted Appellant this afternoon in an attempt to determine whether it consents to the motion. Appellant responded, indicating it has not yet determined whether it consents to the motion.

### **Conclusion**

For the foregoing reasons, Appellee respectfully requests that this Court grant his motion and allow each party forty-five minutes for oral argument.

Respectfully submitted,

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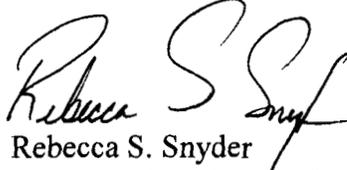
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**Certificate of Service**

I certify that a copy of the foregoing was sent via e-mail to Major Jeffrey D. Groharing, USMC; Captain Keith A. Petty, JA, USA; and Lieutenant Clayton Trivett, Jr., JAGC, USN on 20 August 2007.

  
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